

August 23, 1990

MEMORANDUM

TO: The Honorable Robert A. Alm
Director of Commerce and Consumer Affairs

ATTN: James Kobashigawa, Executive Secretary
Contractors License Board

FROM: Lorna J. Loo, Staff Attorney

SUBJECT: Disclosure of Information About Revocation of
Contractors' Licenses

This is in response to your letter, dated December 5, 1989, regarding disclosure of information about the revocation of contractors' licenses to the National Association of State Contractors' Licensing Agencies ("NASCLA").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), information about the revocation of contractors' licenses is disclosable to the NASCLA.

BRIEF ANSWER

Except for individuals' social security numbers and birthdates, the information sought by NASCLA should be made available for public inspection and copying. A roster of licensed contractors, which may include the contractors' names, business addresses, and the type and status of the license held, is expressly made public by the UIPA. Haw. Rev. Stat. . 92F-12(a)(13) (Supp. 1989). The license number and the individual's position in the business entity are publicly disclosable since they are routinely made available to the public in accordance with other statutes.

The effective date of a license revocation is public information because it is contained in the DCCA's final order that is made public by section 91-2, Hawaii Revised Statutes. With regards to the grounds for revocation, the UIPA provides that a licensee does not have a significant privacy interest in the record of any proceeding resulting in the licensee's discipline and the grounds for discipline. Haw. Rev. Stat. . 92F-14(b) (7) (A) (Supp. 1989). In our opinion, there is sufficient public interest in government regulation of licensed contractors to outweigh the minimal privacy interest in such records. Therefore, the UIPA requires public disclosure of the grounds for license revocation since disclosure does not constitute a clearly unwarranted invasion of privacy.

However, an individual's social security number and birthdate are confidential because public disclosure of this information would constitute a clearly unwarranted invasion of the individual's personal privacy. Haw. Rev. Stat. . 92F-13(1) (Supp. 1989).

FACTS

The Contractors License Board, administratively attached to the State of Hawaii Department of Commerce and Consumer Affairs ("DCCA"), would like to enter into a proposed agreement ("proposed agreement") with the NASCLA to participate in a nationwide program for the exchange of information about individuals whose contractor licenses were revoked as a result of disciplinary actions ("former licensees"). Under the proposed agreement, the DCCA would provide the following information about a former licensee to NASCLA, unless precluded by applicable laws or the unavailability of the information:

- 1) Name of the individual on the license
- 2) Individual's social security number
- 3) Individual's birthdate
- 4) License number(s)
- 5) Name of the business entity on the license
- 6) Position of the individual in the business entity
(officer, partner, sole proprietor, or
responsible managing employee/qualifying person)
- 7) License classification
- 8) Date of license revocation
- 9) Grounds for revocation

According to the proposed agreement, the DCCA would only provide information regarding license revocations where they

constituted the disciplinary action imposed in the DCCA's formal proceedings against the respective licensed contractors. The proposed agreement also states that the DCCA would agree to keep all information about former licensees that it receives from the NASCLA confidential.¹

Currently, the DCCA publicly discloses the information about former licensees that is requested by the NASCLA, except for an individual's social security number and birthdate. Typically, a hearings officer of the DCCA conducts the contested case hearing on a proposed license revocation, and the DCCA's Contractors License Board subsequently reviews the hearing records and issues its final order at a public board meeting. The DCCA makes public the final order setting forth the effective date of the license revocation, as well as the findings of fact and conclusions of law setting forth the grounds for the license revocation ("disciplinary records"). You have requested an advisory opinion from the Office of Information Practices ("OIP") regarding whether disclosure of the requested information to NASCLA is consistent with the UIPA.

DISCUSSION

A. Public Information

1. Name, License Classification, and Status.

The UIPA states the general rule that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1989). In addition to this general rule of disclosure, section 92F-12, Hawaii Revised Statutes, sets forth a list of records (or categories of records) which the Legislature declared shall be disclosed "as a matter of public policy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J.

¹Generally, a government agency's promise of confidentiality cannot override the UIPA's mandate of public access to publicly disclosable government records. See OIP Op. Ltr. No. 90-2 (Jan. 18, 1990). It is likely that some of the information that the DCCA will receive from NASCLA under the proposed agreement would be publicly disclosable under the UIPA. When applied to records that are made public under the UIPA, the promise of confidentiality in the proposed agreement would contravene the UIPA and, therefore, be void.

689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). In pertinent part, this statute states:

.92F-12 Disclosure required. (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

. . . .

(13) Rosters of persons holding licenses or permits granted by an agency which may include name, business address, type of license held, and status of the license;

. . . .

Haw. Rev. Stat. . 92F-12(a)(13) (Supp. 1989).

Consistent with the above provision, the DCCA publicly discloses the name, type or classification of license, and the licensure status of each contractor that it has licensed.

2. License Number and Position in Business.

The license number and the individual's position in the business entity should be disclosed to NASCLA since this information is routinely disclosed to the public in accordance with other statutes. See Haw. Rev. Stat. . 92F-12(b)(2) (Supp. 1989). In particular, the actual license, which contains the business name and license number, is required to be displayed, and presumably made available for public inspection, at a definite place of business from which the licensee operates in the State. Haw. Rev. Stat. . 444-14 (1985). The positions of individuals who are corporate officers or partnership members are required to be set forth in the corporation's annual report or the partnership's annual statement filed with the DCCA's Business Registration Division.² Haw. Rev. Stat. . 415-125

²Statutes previously in effect had expressly mandated public disclosure of corporate documents required to be filed with DCCA. Haw. Rev. Stat. . 416-14 (repealed); see also Haw. Rev. Stat. . 92-50 (repealed). Although currently a corporation's annual report is not explicitly made public by a statute, we find that no UIPA exception to disclosure applies to this record which is routinely made public by DCCA.

and 425-1 (1985); see Haw. Rev. Stat. . 425-11 (1985) (requiring filed information about partnerships to be open to public inspection). If a licensee is a sole proprietor, this business position is revealed on the license since the individual's name is set forth as the licensee doing business under the given business name.

3. Effective Date and Grounds for License Revocation.

The effective date of an individual's license revocation is contained in the DCCA's final order that is available for public inspection by law. When a license revocation, suspension, or denial is proposed, the DCCA must give the affected person the opportunity for a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes. Haw. Rev. Stat. . 444-18 (Supp. 1989). After reviewing the records from a contested case, the DCCA issues its final order. As to this final order, chapter 91, Hawaii Revised Statutes, provides:

.91-2 Public information. (a) In addition to other rulemaking requirements imposed by law, each agency shall:
. . . .

(4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required,

Haw. Rev. Stat. . 91-2 (1985) (emphases added).

This statute mandates public disclosure of the DCCA's final orders issued under chapter 91, Hawaii Revised Statutes, including those that impose license revocation. An agency must disclose records when required by statute. See Haw. Rev. Stat. . 92F-12(b) (2) (Supp. 1989).

In addition, the UIPA expressly makes public "[f]inal opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases." Haw. Rev. Stat. . 92F-12(a) (2) (Supp. 1989) (emphases added). A contested case under chapter 91, Hawaii Revised Statutes, is a form of adjudication since it is "a proceeding in which the legal

rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." Haw. Rev. Stat. . 91-1 (1985). Since the DCCA's final orders in contested cases constitute "orders made in the adjudication of cases," they are also public under the UIPA. Haw. Rev. Stat. . 92F-12(a)(2) (Supp. 1989). The DCCA may, therefore, disclose to NASCLA the effective dates of license revocations since they are contained in its final orders made public by law.

Since the findings of fact and conclusions of law must "accompany" the final order under section 91-12, Hawaii Revised Statutes, these records may arguably be considered part of the final opinion and order. Accordingly, the grounds for license revocation contained therein should also be made public. See Haw. Rev. Stat. . 91-2 (1985).

Further, the UIPA expressly provides that an individual has no significant privacy interest in information describing the grounds for discipline, such as license revocation, that is imposed. The UIPA states that:

(b) The following are examples of information in which the individual has a significant privacy interest:

.

(7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:

(A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;

Haw. Rev. Stat. . 92F-14(b)(7)(A) (Supp. 1989) (emphases added). According to this UIPA provision, a former licensee does not have a significant privacy interest in the DCCA's disciplinary records regarding the individual's license revocation since (1) they are records of the DCCA's proceeding in which discipline, in fact, resulted, and (2) they set forth the grounds for discipline. This privacy interest is weighed against the public interest in disclosure to determine whether disclosure would "constitute a clearly unwarranted invasion of personal privacy"

under section 92F-13(1), Hawaii Revised Statutes.³ As for the counterveiling public interest, the UIPA's legislative history instructs that "[i]f the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy."

S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

While a former licensee's privacy interest in disciplinary records is not significant, there is more than a scintilla of public interest in these records that may shed some light upon the government's regulation of licensed contractors. See Minneapolis Star and Tribune Company v. State, 163 N.W.2d 46 (Minn. 1968) (public has a right to learn of disciplinary action taken against a licensed doctor and the reasons for the action).

Because the public interest outweighs the minimal privacy interest in information contained in disciplinary records, disclosure of the grounds for license revocation set forth in these records will not constitute a clearly unwarranted invasion of personal privacy. Since no UIPA exception to disclosure applies, the DCCA is correct in its policy of making information in a licensee's disciplinary records public and may disclose the grounds for revocation to NASCLA.

B. Confidential Information--Social Security Numbers and Birthdates

With respect to the social security number and birthdate of a former licensee, the OIP has previously opined that social security numbers and birthdates cannot be disclosed to a private entity compiling a data bank of information about individuals denied certification by the State Department of Education. See OIP Op. Ltr. No. 90-7 (Feb. 9, 1990). The rationale for this conclusion was that disclosure of this information is not permitted under the UIPA exception to disclosure for "[g]overnment records which, if disclosed, would

³"Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. . 92F-14(a) (Supp. 1989).

constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1989). This UIPA exception involves a "balancing" of the privacy and public interests in disclosure. Haw. Rev. Stat. . 92F-14(a) (Supp. 1989). Individuals have a significant privacy interest in their social security numbers and birthdates, while there is little public interest in disclosure since it would not shed light upon government conduct. See OIP Op. Ltr. No. 90-7 (Feb. 9, 1990).

Likewise, in the present facts where individuals' social security numbers and birthdates are similarly requested by a private organization for compilation in a nationwide data bank, the privacy interest in this information outweighs the public interest in disclosure. Therefore, disclosure of former licensees' social security numbers and birthdates to NASCLA would constitute a clearly unwarranted invasion of privacy and would not be permitted under the UIPA. Haw. Rev. Stat. . 92F-13(1) (Supp. 1989).

CONCLUSION

Because the UIPA expressly requires public disclosure of "rosters of persons holding licenses . . . which may include name, business address, type of license held, and status of the license," the DCCA may disclose such information about former licensees to NASCLA. Haw. Rev. Stat. . 92F-12(a)(13) (Supp. 1989). Further, the license number and the individual's position in the business entity are also disclosable to NASCLA since this information is routinely made public in accordance with other statutes.

Since it is contained in the DCCA's final order required by law to be public, the effective date of a license revocation is public information. The UIPA makes clear that a licensee does not have a significant privacy interest in the record of a proceeding resulting in the discipline of the licensee and the grounds for discipline. Haw. Rev. Stat. . 92F-14(b)(7) (Supp. 1989). We believe that disclosure of the grounds for discipline serves the public interest in government regulation of licensed contractors. Since the public interest outweighs the privacy interest, disclosure of this information will not constitute a clearly unwarranted invasion of personal privacy. Therefore, the grounds for license revocation are also disclosable to the public, including NASCLA. In contrast, a former licensee's

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social security number and birthdate are confidential under the
UIPA because disclosure would constitute a clearly unwarranted
invasion of the individual's personal privacy. Haw. Rev. Stat.
. 92F-13(1) (Supp. 1989).

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APPROVED:

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Director